

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1334

By: Morgan

AS INTRODUCED

An Act relating to the Oklahoma Underground Facilities Damage Prevention Act; amending 63 O.S. 2001, Sections 142.2, 142.3, 142.6 and 142.8, which relate to the Oklahoma Underground Facilities Damage Prevention Act; stating purpose; requiring certain operators to register with Oklahoma One-Call System, Inc.; requiring certain excavators to notify Oklahoma One-Call System, Inc.; defining terms; modifying definitions; removing references to certain notification centers; requiring all operators to participate in certain system; removing exception for operators to register and file notice with county clerk; stating requirements for underground facility operators, Oklahoma One-Call System, Inc. and excavators; updating statutory reference; stating penalties for violation of act; providing for actions to be brought by the Attorney General, Corporation Commission, county prosecutors, city attorneys or any aggrieved person; providing for distribution of certain penalties; stating liability of violators; stating exceptions; repealing 63 O.S. 2001, Sections 142.4, 142.10 and 142.11, which relate to filing fees, notification centers and certain exemptions for public pre-engineered projects; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142.1a of Title 63, unless there is created a duplication in numbering, reads as follows:

In an effort to protect the citizens of this state, heighten public security and prevent damages to underground facilities, every operator of underground facilities as defined by this act is hereby required to register with the Oklahoma One-Call System, Inc. and all persons planning to excavate or demolish any site within this state are hereby required to notify the Oklahoma One-Call System, Inc.

prior to beginning any excavation or demolition pursuant to the provisions of this act.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 142.2, is amended to read as follows:

Section 142.2 As used in the Oklahoma Underground Facilities Damage Prevention Act:

1. "Certified project" means a project where the public agency responsible for the public project, as part of its procedure, certifies that the project right-of-way is free and clear of underground facilities or wherein the public agency responsible for such project, as part of its procedure, notifies all persons determined by the public agency to have underground facilities located within the construction right-of-way and certifies that all known underground facilities are duly located or noted on the engineering drawings for the project;

2. "Damage" means any impact upon or removal of support from an underground facility as a result of explosion, excavation or demolition which according to the operating practices of the operator of the underground facilities would necessitate the repair thereof;

3. "Demolish" means to wreck, raze, render, move or remove a structure by means of any equipment or explosive;

4. "Demolition" means the act or operation of demolishing a structure;

5. "Emergency" means a situation exists that endangers life, health or property;

6. "Excavate or excavation" means to dig, compress or remove earth, rock or other materials in or on the ground by use of mechanized equipment or blasting, including, but not ~~necessarily~~ limited to, auguring, boring, backfilling, drilling, grading, pile driving, plowing in, pulling in, trenching, tunneling and plowing; provided, however, that ~~neither~~:

- ~~a. the moving of earth by tools manipulated only by human or animal power, nor~~
- ~~b. any form of cultivation for agricultural purposes, nor any augering, dozing by noncommercial dozer operators or digging for postholes, farm ponds, land clearing or other normal agricultural purposes, nor~~
- ~~c. routine maintenance, nor~~
- ~~d. work by a public agency or its contractors on a preengineered project, nor~~
- ~~e. work on a certified project, nor~~
- ~~f. work on a permitted project, nor~~
- ~~g. the opening of a grave in a cemetery, nor~~
- ~~h. a solid waste disposal site which is a preengineered project, nor~~
- ~~i. any individual excavating on his own property and who is not in the excavating business for hire,~~

~~shall be deemed excavation~~ any hand digging performed by an owner or occupant of private property shall not be deemed excavation for the purpose of this definition;

~~6.~~ 7. "Excavation" means the act or operation of excavating;

~~7.~~ 8. "Excavator" means a person or public agency that intends to excavate or demolish within ~~the State of Oklahoma~~ this state;

~~8. "Notification center" means a center operated by an organization which has as one of its purposes to receive notification of planned excavation and demolition in a specified area from excavators, and to disseminate such notification of planned excavation or demolition to operators who are members and participants;~~

9. "Oklahoma One-Call System, Inc." means the non-profit corporation, incorporated in this state in 1979, for the purpose of preventing damage to underground facilities and which is authorized to receive notification of planned excavation and demolition in a

specified area from excavators and disseminate such notification of planned excavation or demolition to operators of underground facilities required to register with Oklahoma One-Call System, Inc.;

10. "Operator" shall mean and include any person or public agency owning or operating underground facilities; except private underground facilities not used to service the public, which serve residential or rural customers one or more of whom is the owner of such facilities;

~~10.~~ 11. "Permitted project" means a project where a permit for the work to be performed must be issued by a state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of any blasting and notify each owner of such underground facilities;

~~11.~~ 12. "Person" includes any individual, partnership, corporation, association, cooperative, trust or other entity, including a person engaged as a contractor by a public agency, but not including a public agency;

~~12.~~ 13. "Preengineered project" means a public project wherein the public agency responsible for such project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known underground facilities are duly located or noted on the engineering drawing and specifications for the project;

~~13.~~ 14. "Public agency" means the state or any board, commission or agency of the state, and any city, town, county, subdivision thereof or other governmental entity;

~~14.~~ 15. "Routine maintenance" means the ~~grading of roads and barrow or drainage ditches,~~ the removal and replacement of pavement, ~~including excavation relating thereto and the installation and maintenance of drainage and bridge facilities, signs, guardrails, and electrical and communications facilities~~ in or on the public rights-of-way by a public agency; and

~~15.~~ 16. "Underground facility" means any underground line, facility, system and appurtenances thereto, for producing, storing, conveying, transmitting or distributing communication, electricity, power, light, heat, gas, oil, petroleum products, water (including storm water), steam, sewage and other commodities.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 142.3, is amended to read as follows:

Section 142.3 A. ~~Unless an operator is a member of or participant in a notification center which has filed a statement with the county clerk, pursuant to Section 142.10 of this title, all operators having underground facilities within a county shall have on file with the county clerk in such county a notice that such operator has underground facilities located within the county and the address and telephone number of the person or persons from whom information about such underground facilities may be obtained~~ All operators as defined by Section 142.2 of this title shall participate in the Oklahoma One-Call System, Inc.

B. All operators of underground facilities that are subject to the Hazardous Liquid Transportation System Safety Act and all operators of natural gas pipelines subject to the jurisdiction of the ~~Oklahoma~~ Corporation Commission shall participate in a ~~statewide one-call notification center whether or not they have filed with the county clerks of the counties in which they have facilities~~ the Oklahoma One-Call System, Inc.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 142.6, is amended to read as follows:

Section 142.6 A. Before an excavator shall demolish a structure, discharge any explosive or commence to excavate in a highway, street, alley or other public ground or way, on or near the location of an operator's underground facilities, or a private easement, such excavator shall first notify ~~all operators in the county who have on file with the county clerk a notice pursuant to Section 3 of this act, and all notification centers who have on file with the county clerk a statement pursuant to Section 10 of this act~~ the Oklahoma One-Call System, Inc., to determine whether any operators have underground facilities in or near the proposed area of excavation or demolition; ~~except that when an excavator has knowledge that an operator does not have underground facilities within the area of the proposed excavation such excavator need not notify such operator of the proposed excavation; provided however, that such excavator shall be responsible for damage to the underground facilities of an operator that was not so notified.~~ Such notice shall be given no more than ten (10) days nor less than forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, prior to the commencement of the excavation or demolition.

B. Each operator served with notice in accordance with subsection A above either directly or by notice to ~~a notification center of which such operator is a member or participant~~ the Oklahoma One-Call System, Inc., shall, within forty-eight (48) hours after receipt thereof, excluding Saturdays, Sundays and legal holidays, unless otherwise agreed to between the excavator and operator, locate and mark or otherwise provide the approximate location of the underground facilities of the operator in such a manner as to enable the excavator to employ hand-dug test holes to determine the precise location of the underground facilities in advance of excavation; provided, however, that the operators of a municipally owned water, sewage and communication facility need only notify the excavator within the prescribed period that they have

facilities located in or near the proposed area of excavation or demolition, the type of facilities and their approximate location, if known. For the purpose of this act, the approximate location of the underground facilities shall be defined as a strip of land two (2) feet on either side of such underground facilities. Whenever an operator is served with notice of an excavation or demolition and determines that he or she does not have underground facilities located within the proposed area of excavation or demolition, the operator shall communicate this information to the excavator originating the notice prior to the commencement of such excavation or demolition.

C. The only exception to subsection A of this section shall be when an emergency exists that endangers life, health or property. Under these conditions, excavation operations may begin immediately, providing reasonable precautions are taken to protect underground facilities. All operators of underground facilities within the area of the emergency must be notified promptly when an emergency requires excavation prior to the location of the underground facilities being marked.

D. Every notice given by an excavator to an operator pursuant to this ~~section or to a notification center pursuant to Section 10 of this~~ act, shall contain at least the following information:

1. The name of the individual serving such notice;
  2. The location of the proposed area of excavation or demolition;
  3. The name, address and telephone number of the excavator or excavator's company;
  4. The excavator's field telephone number, if one is available;
  5. The type and the extent of the proposed work;
  6. Whether or not the discharging of explosives is anticipated;
- and
7. The date and time when work is to begin.

E. In marking the approximate location of underground facilities, an operator shall follow the standard color coding described herein:

<u>OPERATOR AND TYPE OF PRODUCT</u>	<u>SPECIFIC GROUP IDENTIFYING COLOR</u>
Electric Power Distribution	
and Transmission	Safety Red
Municipal Electric Systems	Safety Red
Gas Distribution and	
Transmission	High Visibility Safety Yellow
Oil Distribution and	
Transmission	High Visibility Safety Yellow
Dangerous Materials, Product	
Lines, Steam Lines	High Visibility Safety Yellow
Telephone and Telegraph	
Systems	Safety Alert Orange
Police and Fire	
Communications	Safety Alert Orange
Cable Television	Safety Alert Orange
Water Systems	Safety Precaution Blue
Slurry Systems	Safety Precaution Blue
Sewer Systems	Safety Green

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142.6A of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Operators shall comply with the following requirements:

1. Operators shall be required to register all new underground facilities with Oklahoma One-Call System, Inc. Such registration shall be required upon the in-service date of the underground facility;
2. Operators shall comply with all reasonable field-meeting requests received from excavators;



B. Oklahoma One-Call System, Inc. shall comply with the following requirements:

1. Oklahoma One-Call System, Inc. shall provide to all excavators properly issuing a request for underground facility location, a physical copy of a dig ticket by mail, electronic mail, facsimile or other method;

2. Oklahoma One-Call System, Inc. shall provide damage prevention education to all pertinent audiences;

3. Oklahoma One-Call System, Inc. shall conduct education programs designed to educate violators of the requirements of this act;

4. Oklahoma One-Call System, Inc. shall sponsor Regional Damage Prevention Committees. Membership on such committees shall include underground facility operators, contractors and other interested parties as needed;

C. Excavators shall comply with the following requirements:

1. Each person preparing design stage project planning involving excavation shall make all prudent effort to determine underground facility operators in the area. Such persons shall establish appropriate communication with each such operator and plan excavation and new underground facility installation to avoid or minimize interference or damage to the identified underground facilities;

2. Excavators shall maintain a copy of a dig ticket on site;

3. Location requests relayed to Oklahoma One-Call System, Inc. shall not exceed one thousand three hundred and twenty (1320) feet in length unless otherwise agreed to by Oklahoma One-Call System, Inc. and the excavator. County commissioners grading may submit location requests not to exceed two thousand six hundred and forty (2640) feet in length;

4. Tickets issued by Oklahoma One-Call System, Inc. shall be valid for a period of twenty-one (21) days. Upon expiration,

excavators shall be required to notify the Oklahoma One-Call System, Inc;

5. Excavators shall maintain underground facility location marks;

6. Excavators shall not excavate through the use of mechanical digging within a ten (10) foot radius of underground facility location marks until such underground facilities have been hand-located by the excavator; provided, however, county commissioners, using Oklahoma One-Call System, Inc., must inform operators that they will be grading so the operator may hand locate their facilities to determine if such facilities are in conflict with the proposed grading, if the operator so chooses;

7. Excavators shall hand dig within the tolerance zone, which shall be defined as twenty-four (24) inches on either side of underground facility location marks. When excavation is to take place within the tolerance zone, the excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in or near the excavation area. Excavators shall consider the following methods based on climate or geographical conditions: hand digging when practical (pot holing), soft digging, vacuum excavation methods, pneumatic hand tools, or other mechanical methods with the approval of the facility owner or operator. Hand digging and noninvasive methods are not required for pavement removal and road grading by county commissioners;

8. Excavators shall comply with all reasonable requests for field meetings by underground facility operators.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 142.8, is amended to read as follows:

Section 142.8 In addition to the notice required by Section ~~6 of this act~~ 142.6 of this title, whenever the demolition of a structure is proposed, operators in the county ~~who have a notice on file with the county clerk pursuant to Section 3 of this act and all~~

~~notification centers who have a notice on file with the county clerk pursuant to Section 10 of this act~~ where the proposed demolition will be conducted shall be given at least sixty (60) days' notice of the proposed demolition before the demolition work begins unless a public agency determines that such structure endangers the public health or safety, then the public agency may, in the manner provided by law, order the immediate demolition of such structure.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 142.9b of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any excavator in violation of the Oklahoma Underground Facilities Damage Prevention Act is subject to a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) per violation in addition to any liability or damages owed to an owner of a facility damaged by the excavator.

B. Any operator, not subject to the jurisdiction of the Corporation Commission, found in violation of this act shall be subject to a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) per violation.

C. Any operator, subject to the jurisdiction of the Corporation Commission pursuant to the provisions of Sections 5 and 47.1 et seq. of Title 52 of the Oklahoma Statutes, found in violation of this act is subject to a civil penalty pursuant to state law.

D. Actions to recover the penalties authorized by this section may be brought by the Attorney General of Oklahoma, the Corporation Commission, the county prosecutor or the city attorney at the request of the Board of the Oklahoma One-Call System, Inc., or any aggrieved person in the jurisdiction in which the cause arose or in which the defendant has its principal place of business or resides.

E. Ninety percent (90%) of the penalties recovered in any such action shall be deposited into the general fund of the state agency, county or municipality that prosecutes the action. Ten percent (10%) of the penalties recovered in any such action shall be deposited into the general fund of the Oklahoma One-Call System, Inc. for the purpose of administering the provisions of this act and funding public education and awareness of this act.

F. If a violation of this act results in physical contact with an underground facility, the violator shall be liable to the owner of the facility for all damages to the facilities and costs, expenses and damages to third parties incurred by the owner of the facility as a result of the violation.

G. This section shall not apply to excavations made during an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.

H. Any county performing road grading will be exempt from penalties authorized by this section; provided, however, this exemption shall not apply to contractors acting on behalf of any governmental entity.

SECTION 8. REPEALER 63 O.S. 2001, Sections 142.4, 142.10 and 142.11, are hereby repealed.

SECTION 9. This act shall become effective July 1, 2002.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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